

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: NAKASHIMA=6

In re Application of:)	Conf. No.: 3356
)	
Toshihiro NAKASHIMA et al)	Art Unit: 1645
)	
I.A. Filing Date: 03/28/2003)	Examiner: O.A. Ogunbiyi
§371(c) Date: 09/28/2005)	
)	Washington, D.C.
Appln. No.: 10/551,263)	
)	
For: MODIFIED SEB AND)	October 8, 2009
PROPHYLACTICS/REMEDIES...)	

REQUEST TO VACATE IMPROPER NOTICE OF ABANDONMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, Mail Stop Amendments
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants are in receipt of a Notice of Abandonment mailed September 24, 2009, which is erroneous because the term for reply has not yet expired.

THE FACTS

Applicants filed a timely Notice of Appeal on March 16, 2009. The two months' unextended term for filing the brief expired May 16, 2009, but Appellants are permitted to purchase up to five one-month extensions of time.

Appellants are entitled to up to five one-month extensions of time because there is no six month statutory term for filing the brief on appeal.

ACTION REQUESTED

Appellants request that the Notice of Abandonment mailed September 24, 2009, be withdrawn (vacated).

REMARKS

If the usual six-month statutory term were to apply in the present situation, then the present application would indeed be abandoned, but such six-month statutory term does not apply.

Appellants refer to and rely on 37 CFR §1.136(a)(1) which states in part as follows:

If an applicant is required to reply within a nonstatutory... time period, applicant may extend the time period for reply up to... five months after the time period set for [a] reply.... [emphasis added]

The text deleted from the above quote is the text relating to a shortened statutory time period, and does not apply to the present situation.

In this regard, attention is respectfully invited to MPEP 710.02(d) which states in part as follows:

The 2-month time period for filing an appeal brief on appeal to the Board of Patent Appeals and Interferences and the 1-month time period for filing a new appeal brief... are time periods, but are not (shortened) statutory periods for reply set pursuant to 35 U.S.C. 133. Thus, these periods are, unless otherwise provided, extendable by up to 5 months under 37 CFR 1.136(a).... [emphasis added]

Appln. No. 10/551,263
Request to Vacate Improper Notice of Abandonment
dated October 8, 2009

Thus, it is clear that the present application is not abandoned,
and the Notice of Abandonment is erroneous.

Wherefore, withdrawal of the Notice of Abandonment is
respectfully requested.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By

A handwritten signature in dark ink, appearing to read "A. Neimark", written over a horizontal line.

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